IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 5623 of 2005

Date of decision: 26.10.2006

S.R. Joshi

..... Petitioner.

Versus

Kashmiri Lal Goyal

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Gurpreet Singh, Advocate
for the petitioner.

Mr. Arun Jain ,Advocate
for the respondent.

P.S. PATWALIA, J. (ORAL)

This order will dispose of civil revision Nos. 5623, 5624, 5625 and 5626 of 2005. For facility of reference facts are being taken from civil revision No. 5623 of 2005.

The present revision petition has been filed against the order passed by the trial Court dated 21.09.2005 to the limited extent that the trial Court has allowed the application for leave to defend filed by the petitioner-defendant in the suit subject to the condition that a bank guarantee equal to the suit amount is furnished by the next date of hearing. When notice of motion in this revision petition was issued the following order was passed on 27.10.2005:-

"Counsel for the petitioner undertakes that instead of bank guarantee, petitioner is ready to furnish surety of his or 3rd party's immovable property, to the satisfaction of the trial Court, regarding amount, in dispute.

Notice of motion for 06.12.2005.

Dasti also.

In the meantime, subject to petitioner's furnishing surety, as undertaken, of immovable property, within 15 days from today, operation of the impugned order shall remain stayed.

Copy of the order be given dasti on payment of usual charges."

Learned counsel for the petitioner submits that after passing of the aforementioned order, he has furnished immovable property security before the trial Court which was accepted by the Court on 11.11.2005. He states that he will be satisfied if the interim order is confirmed and the order made by the trial Court granting leave to defend subject to furnish bank guarantee is modified and the petitioner is permitted to furnish immovable property security instead of bank guarantee. Mr. Jain however contends that the respondent-plaintiff in the suit had filed a suit for recovery of licence fee for use and occupation of cabin in SCO No. 1108-09 in Sector 22-B, Chandigarh. He further submits that the petitioner is continuing to enjoy the use of the cabin without paying any rent to any person for the last number of years. He therefore submits that this is a case where the petitioner should be directed to pay the rent and therefore the order made by the trial Court directing him only to furnish security is illegal and invalid.

Refuting this allegation Mr. Gurpreet Singh, learned counsel for the petitioner submits that he is willing to give the rent to the original landlord. However the original landlord is not accepting the rent.

I am of the opinion that in view of the limited controversy in this revision petition I need not go into the merits of the claim of either party. The present revision petition has been filed by the defendant. His limited grievance is that instead of furnishing bank guarantee he is ready to furnish immovable property security. I am of the opinion that the order for furnishing bank guarantee is to secure the interest of the plaintiff in the event of his success in the suit. The interest can be sufficiently secured in the present case by directing the petitioner to furnish immovable property security. Therefore the order dated 21.09.2005 is modified and it is directed that rather than bank guarantee the petitioner would furnish immovable property security to the satisfaction of the trial court so as to safeguard the interest of the plaintiff in the event of his success in the suit.

At this stage Mr. Jain submits that a reading of the order dated 11.11.2005 would show that the security had been accepted by the trial Court without giving any notice to the plaintiff. I have gone through the order dated 11.11.2005. A reading of the order would show that the submission made by Mr. Jain is correct. Since the security was accepted without notice to the plaintiff it will be open to him to move an application before the Court pointing out any deficiency in the security offered and the trial Court would then deal with the matter in accordance with law.

Mr. Jain contends that in the present case the petitioner is enjoying the property for the last one decade without paying any rent to anybody. He further submits that this is an appropriate case where proceedings before the trial Court should be concluded expeditiously. Mr. Gurpreet Singh contends that he has no objection to this. I am of the opinion that in the facts and circumstances of this case, the trial Court should be directed to expedite the proceedings and conclude the same within six months. Accordingly a direction is issued to the trial Court to conclude the proceedings in the suit within six months.

The revision petitions stand disposed of in the aforementioned terms.

October 26, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**